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FRESH EXPRESS, INC.

**UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA
SAN JOSE DIVISION**

BLANCA LIDIA BONILLA, on behalf of herself and on behalf of all other similarly situated individuals, Plaintiff, v.) Case No. 5:12-cv-00783-EJD)) Assigned to the Hon. Edward J. Davila)) JOINT STIPULATION TO DISMISS CASE)
FRESH EXPRESS INCORPORATED, a Delaware corporation; and DOES 1-50, inclusive, Defendants.) Complaint Filed: 2/17/2012) Trial Date: None Set))

1 Pursuant to Federal Rule of Civil Procedure Rule 41(a)(1)(A)(ii), it is hereby stipulated by
2 and between Plaintiff BLANCA LIDIA BONILLA and Defendant FRESH EXPRESS
3 INCORPORATED, through their attorneys of record, as follows:

4 1) On or about July 20, 2012, approximately five months after the filing of the instant
5 action in federal court, Defendant represented to Plaintiff that Defendant is in fact a California
6 entity, a corporation with its principle place of business in Salinas, California. For purposes of
7 this stipulation, Plaintiff does not dispute that representation. The parties therefore agree that
8 diversity jurisdiction does not exist under 28 U.S.C. Section 1332, and no other basis for federal
9 jurisdiction has been alleged. As a result, the proper venue for Plaintiff's claims lies in the
10 California Superior Court;

11 2) Plaintiff will file an action in state court within 30 days of this Court's order
12 dismissing this action in accordance with this stipulation;

13 3) The parties request that the above-captioned action be dismissed without prejudice
14 in its entirety as to all claims and all parties;

15 4) The parties agree that in the state court action to be filed by Plaintiff there will be a
16 tolling of claims from the date this action was filed (February 17, 2012) until the date Plaintiff
17 files in state court, as long as Plaintiff files the state court action within 30 days of the dismissal
18 of this case. That is, the claims made in this federal court action by Plaintiff on her behalf and on
19 behalf of others similarly situated, when alleged in the state court action to be filed by Plaintiff
20 individually and on behalf of others similarly situated, will be for claims arising up until February
21 17, 2012 and ongoing until resolution, and dating back to the times prior to that as allowed by the
22 applicable statutes of limitations depending on the bases of the various claims made. By this
23 agreement Defendant does not admit that any of the claims made by Plaintiff have merit or that
24 they were timely made when this action was filed on February 17, 2012. Defendant only agrees
25 to treat the state court action to be filed as though it had been filed on February 17, 2012.

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1 Pursuant to Local Rule 5-1(i)(3), Daniel P. Hunt attests that concurrence in the filing of
2 this document has been obtained from each of the other signatories to this document.

3
4 THE DOWNEY LAW FIRM, LLC

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6 Dated: October 11, 2012

/s/ Daniel P. Hunt

7 By: Daniel P. Hunt
8 Attorneys for Plaintiff and the proposed Class

9 LITTLER MENDELSON

10
11 Dated: October 11, 2012


/s/ Michelle B. Heverly

12 By: Michelle B. Heverly
13 Attorneys for Defendant FRESH EXPRESS INC.

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15 IT IS SO ORDERED

16 The Clerk shall close this file.

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18 Dated: October 15, 2012



19 United States District Judge
20 Edward J. Davila
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